

Re: Proposal for a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (COM(2013)824)

DOCUMENT APPROVED BY THE COMMITTEE ON EU POLICIES OF ITALY'S CHAMBER OF DEPUTIES

The Committee on EU Policies,

having appraised the Proposal for a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (COM(2013)824) for its compliance with the principle of subsidiarity;

having regard to the European Commission's recommendation of 27 November 2013 concerning the right to legal aid for suspects or accused persons in criminal proceedings, which accompanies the Proposal;

taking account of the impact assessment that accompanies the proposal, as well as of the report prepared by the Ministry of Justice and sent to the Houses of Parliament pursuant to article 6, paragraph 4, of Law 234/2012;

whereas:

- a) the proposal is fully compliant with article 47, paragraph 3 of the Charter of Fundamental Rights of the European Union, according to which persons who lack sufficient resources should be granted legal aid in so far as necessary to ensure effective access to justice; and noting also that the case law of the European Court of Human Rights establishes that legal aid must be made available where its absence would nullify the guarantee of effective remedy;
- b) the proposal has a sound legal basis, namely, article 82, paragraph 2 of the Treaty on the Functioning of the European Union (TFEU), which states that to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules;
- c) the proposal is fully compliant with the principle of subsidiarity, since its objectives cannot be sufficiently achieved by Member States;
- d) the proposal is also compliant with the principle of proportionality since it neither sets legally-binding conditions for how entitlement to legal aid should be verified nor seeks to define the quality and effectiveness of legal aid (accreditation and training), these matters being covered by the recommendation that accompanies the proposal;
- e) there is much of merit in article 7 of the proposal, which sets out a non-regression clause whereby the laws of Member States that provide higher standards are safeguarded;
- f) the provisions of the proposal are broadly consistent with the national interest, as they are in line both with article 24, paragraph 3 of the Constitution and with the general principles of criminal trial procedures and current legislation;

g) as noted in the Government report, Italian domestic law would appear to be already aligned to the content of the Proposal for a directive thanks to: the provisions contained in articles 74 *et seq.* of Presidential Decree 115 of 30 May 2002 (part three of the consolidated text of laws and regulations relating to legal costs); the provisions of article 90 *et seq.* of the same, referring to legal aid in criminal proceedings, and those of article 109 referring to provisional entitlement to legal aid; Law 69 of 22 April 2005, which transposed into Italian law articles 9 and 12 of the Council Framework Decision on the European arrest warrant (2002/584/JHA); and article 293 of the Code of Criminal Procedure of Italy;

h) the Proposal for a directive, once adopted, does not seem to imply new or increased costs for the State budget, given that Presidential Decree 115 of 2002 already envisages free legal aid for Italian citizens and, in criminal proceedings, for foreign nationals (including, therefore, EU citizens) and for the stateless persons resident in the country (article 90).

acknowledging that the present final document needs to be transmitted to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council,

CONSIDERS THE PROPOSAL TO BE IN COMPLIANCE

with the principle of subsidiarity as defined by article 5 of the Treaty of the European Union.